

Federal Acquisition Regulation

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which a contract award is based, insert the clause at 52.227-23, Rights to Proposal Data (Technical). Rights to technical data in a proposal are not acquired by mere incorporation by reference of the proposal in the contract, and if a proposal is incorporated by reference, the contracting officer shall follow 27.404 to assure that the rights are appropriately addressed.

Subpart 27.5—Foreign License and Technical Assistance Agreements

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Agencies shall provide necessary policy and procedures regarding foreign technical assistance agreements and license agreements involving intellectual property, including avoiding unnecessary royalty charges.

PART 28—BONDS AND INSURANCE

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28.312 Contract clause for insurance of leased motor vehicles.

28.313 Contract clauses for insurance of transportation or transportation-related services.

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

SOURCE: 48 FR 42286, Sept. 19, 1983, unless otherwise noted.

28.000 Scope of part.

This part prescribes requirements for obtaining financial protection against

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losses under contracts that result from the use of the sealed bid or negotiated methods. It covers bid guarantees, bonds, alternative payment protections, security for bonds, and insurance.

[67 FR 13056, Mar. 20, 2002]

28.001 Definitions.

As used in this part—

Attorney-in-fact means an agent, independent agent, underwriter, or any other company or individual holding a power of attorney granted by a surety (see also *power of attorney* at 2.101).

Bid means any response to a solicitation, including a proposal under a negotiated acquisition. See the definition of “offer” at 2.101.

Bidder means any entity that is responding or has responded to a solicitation, including an offeror under a negotiated acquisition.

Bid guarantee means a form of security assuring that the bidder (1) will not withdraw a bid within the period specified for acceptance and (2) will execute a written contract and furnish required bonds, including any necessary coinsurance or reinsurance agreements, within the time specified in the bid, unless a longer time is allowed, after receipt of the specified forms.

Bond means a written instrument executed by a bidder or contractor (the “principal”), and a second party (“the surety” or “sureties”) (except as provided in 28.204), to assure fulfillment of the principal’s obligations to a third party (the “obligee” or “Government”), identified in the bond. If the principal’s obligations are not met, the bond assures payment, to the extent stipulated, of any loss sustained by the obligee. The types of bonds and related documents are as follows:

(1) An advance payment bond secures fulfillment of the contractor’s obligations under an advance payment provision.

(2) An annual bid bond is a single bond furnished by a bidder, in lieu of separate bid bonds, which secures all bids (on other than construction contracts) requiring bonds submitted during a specific Government fiscal year.

(3) An annual performance bond is a single bond furnished by a contractor,

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in lieu of separate performance bonds, to secure fulfillment of the contractor’s obligations under contracts (other than construction contracts) requiring bonds entered into during a specific Government fiscal year.

(4) A patent infringement bond secures fulfillment of the contractor’s obligations under a patent provision.

(5) A payment bond assures payments as required by law to all persons supplying labor or material in the prosecution of the work provided for in the contract.

(6) A performance bond secures performance and fulfillment of the contractor’s obligations under the contract.

Consent of surety means an acknowledgment by a surety that its bond given in connection with a contract continues to apply to the contract as modified.

Penal sum or *penal amount* means the amount of money specified in a bond (or a percentage of the bid price in a bid bond) as the maximum payment for which the surety is obligated or the amount of security required to be pledged to the Government in lieu of a corporate or individual surety for the bond.

Reinsurance means a transaction which provides that a surety, for a consideration, agrees to indemnify another surety against loss which the latter may sustain under a bond which it has issued.

[48 FR 42286, Sept. 19, 1983, as amended at 61 FR 31652, June 20, 1996; 62 FR 44806, Aug. 22, 1997; 66 FR 2130, Jan. 10, 2001; 67 FR 13056, Mar. 20, 2002]

Subpart 28.1—Bonds and Other Financial Protections

28.100 Scope of subpart.

This subpart prescribes requirements and procedures for the use of bonds, alternative payment protections, and all types of bid guarantees.

[62 FR 44806, Aug. 22, 1997]